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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98 RM-9101

REPLY OF GTE SERVICE CORPORATION

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July 30,1997

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TABLE OF CONTENTS

SUMMARY i

I. THE COMMENTS CONFIRM THAT CLECS ARE TRYING TO OBTAIN SUPERIOR SERVICE RATHER THAN THE NONDISCRIMINATORY ACCESS REQUIRED BY THE ACT. 2

A. CLECs are trying to add a "commercially reasonable" requirement to the Act, with the provision that each CLEC is allowed to determine what is reasonable. 2

B. ILECs are already complying with the Act's requirements by providing nondiscriminatory access to existing systems. 5

C. CLECs want to require ILECs to meet higher standards and revamp ILEC systems, but refuse to acknowledge their responsibility to pay for the necessary changes. 7

II. THE RELIEF PETITIONERS SEEK IS UNNECESSARY, WASTEFUL, AND LEGALLY SUSPECT. 8

A. Additional Commission OSS requirements are unwarranted and unnecessary. 8

B. Additional federal OSS standards will be disruptive to industry standards-setting efforts and implementation of state-approved agreements. 11

C. The Commission lacks the authority to adopt additional OSS requirements. 13

III. LONG DISTANCE CARRIERS ARE SEEKING TO REWRITE THE ACT TO PREVENT COMPETITION IN THE LONG DISTANCE MARKET. 15

A. Congress made a clear distinction between Bell Operating Companies and independent LECs. 15

B. Interexchange carriers ("IXCs") are seeking to drive independent ILECs from the long distance market to protect themselves from competition. 18

IV. CONCLUSION 20

SUMMARY

In its recent decision, the Court of Appeals for the Eighth Circuit determined that the Commission has only limited authority to adopt rules relating to the intrastate aspects of Section 251. In addition, the Court specifically concluded that the Commission could not require incumbent local exchange carriers ("ILECs") to provide competitive local exchange carriers ("CLECs") with interconnection and unbundled elements on better terms than the ILEC provides to itself and to its customers. Against this background, Petitioners' request that the Commission begin a rulemaking to adopt specific standards for operations support systems ("OSSs") is inconsistent with the Act and should be rejected.

The standards proposed by Petitioners and the comments filed by numerous CLECs confirm that CLECs are seeking preferential treatment. As GTE and other ILECs have explained in detail, most ILECs are already meeting the nondiscrimination standard by providing access to OSSs for CLECs on the same conditions as ILECs themselves enjoy. As the Court made clear, this nondiscrimination standard does not include custom designing electronic interfaces to meet CLEC demands or complying with standards which a CLEC determines are "commercially reasonable." Although GTE agrees that industry standards will facilitate competition, industry standards-setting bodies such as the Ordering and Billing Forum are making significant progress and should be allowed to complete their work.

The CLECs are likewise off base with regard to cost recovery. The Act and the Commission's own precedents state that ILECs are entitled to recover the costs of

interconnection and unbundled elements from the cost-causing CLEC. The Court, too, has unambiguously stated that CLECs are responsible for the costs they impose on ILECs. This is exactly what Congress intended; otherwise, there would be no facilities-based competition because CLECs would simply use ILEC networks and force the ILECs to absorb the costs. Nonetheless, the CLECs have either ignored cost recovery or stated that ILECs should bear all these costs.

Several CLECs have further suggested that the Commission apply the Section 271 long distance restrictions to all ILECs as an incentive for them to comply with the nondiscrimination requirement. This Section, however, applies only to Bell Operating Companies and specifically excludes independent ILECs, and GTE in particular, from any restrictions on their ability to provide in-region long distance services. The Commission should not second guess Congress's judgment and apply these conditions to independent ILECs despite the clear wording of the Act. It seems that CLECs are only interested in furthering competition in the local market. When faced with additional competition in the long distance arena, they quickly move to protect their market shares. GTE urges the Commission not to allow its regulatory processes to be used in this anti-competitive manner.

The Act, the Commission's Interconnection orders, and the Court of Appeals have made clear the nondiscrimination standards under which ILECs must provide CLECs with interconnection and unbundled elements. In addition, the Court has stated that it is the responsibility of state commissions to enforce the provisions of state-approved agreements, not the Commission. Therefore, a further rulemaking on the issue of OSS standards is unnecessary, wasteful and legally suspect.

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REPLY OF GTE SERVICE CORPORATION

GTE Service Corporation and its affiliated telephone operating companies[1] (collectively, "GTE") hereby submit their Reply to the comments on the Petition filed by LCI International Telecom Corp. and the Competitive Telecommunications Association ("Petitioners") in the above-captioned docket.[2] Petitioners ostensibly have requested that the Commission initiate a rulemaking to establish standards to enforce the nondiscrimination provisions of Section 251 of the Communications Act (the "Act"). However, as both the Petition and the comments make clear, rather than seeking the nondiscriminatory access required by the Act, competitive local exchange carriers ("CLECs") are in fact demanding that they receive better treatment than that which

[1] GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

[2] Petition for for [sic] Expedited Rulemaking by LCI International Telecom Corp. and Competitive Telecommunications Association (CompTel), CC Docket No. 96-98 (filed May 30, 1997) ("Petition").

incumbent local exchange carriers ("ILECs") provide for themselves and to their own customers – all at no cost to the CLECs. The Court of Appeals for the Eighth Circuit recently made clear the CLECs' request is without statutory basis: ILECs cannot be required to provide superior quality services to CLECs.[3] Moreover, the relief Petitioners are requesting is unnecessary given the ongoing efforts of state commissions and industry standards bodies, and is beyond the Commission's authority since it concerns intrastate services.

These same CLECs also ask the Commission to rewrite the Act and apply the provisions of Section 271 to all ILECs, rather than just Bell Operating Companies. In addition to being patently unlawful, this is the epitome of anti-competitive behavior: CLECs want preferential treatment for their customers in local markets while preventing ILECs from competing in the long distance market. The Commission must rebuff these efforts to misuse its regulatory processes.

I. THE COMMENTS CONFIRM THAT CLECS ARE TRYING TO OBTAIN SUPERIOR SERVICE RATHER THAN THE NONDISCRIMINATORY ACCESS REQUIRED BY THE ACT.

A. CLECs are trying to add a "commercially reasonable" requirement to the Act, with the provision that each CLEC is allowed to determine what is reasonable.

Although Petitioners claim to understand that the Commission has stated that CLECs are entitled to "access to OSS on terms and conditions 'equal to the terms and conditions on which an incumbent LEC provisions such elements to itself or its

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[3] *Iowa Utilities Board v. FCC*, No. 96-3321, slip. op. (8th Cir. July 18, 1997) ("Slip op.").

customers,'"[4] GTE has demonstrated that the Petitioners in fact are demanding preferential treatment.[5] This proposition was confirmed by the comments of numerous CLECs. For example, MCI states that "[m]inimum service levels are needed because in a given case service provided at parity may not be reasonable."[6] Similarly, AT&T claims that "[o]rders must also be provisioned in a nondiscriminatory *and commercially reasonable* manner."[7]

Sprint likewise misunderstands the nondiscriminatory standard. Sprint states that CLECs are entitled to treatment at the same level ILECs provide themselves unless the ILEC is not meeting state standards for its own customers. In this case, Sprint believes that the CLEC would be entitled to service that complies with the state's standards.[8] This position poses two problems. First, in light of the Eighth Circuit Court of Appeals' decision, the Commission can have no role enforcing state standards for intrastate telephone service. Second, GTE questions Sprint's premise that an ILEC

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[4] Petition at 4 (quoting *Second Order on Reconsideration*, CC Docket No. 96-98, ¶ 9 (rel. Dec. 13, 1996)).

[5] Opposition of GTE Service Corporation, CC Docket No. 96-98, RM-9101 at 17-20 (filed July 10, 1997) ("GTE Opposition").

[6] Comments of MCI Telecommunications Corporation to the Petition for Expedited Rulemaking filed by LCI International Telecom Corp. and the Competitive Telecommunications Association, CC Docket No. 96-98, RM-9101 at iii (filed July 10, 1997) ("MCI Comments").

[7] AT&T Comments on Petition for Expedited Rulemaking, CC Docket No. 96-98, RM-9101 at 17 (filed July 10, 1997) (emphasis added) ("AT&T Comments").

[8] Comments of Sprint Corporation, CC Docket No. 96-98, RM-9101 at 6-7 (filed July 10, 1997) ("Sprint Comments").

that is unable to comply with state standards for its own customers would be able to meet these standards for a CLEC.

Indeed, the Local Competition Users Group ("LCUG") standards endorsed by the Petitioners and several commenters constitute not only preferential treatment, but also entirely unrealistic levels of performance.[9] For example, the LCUG quality measurements call for all loops except DS-1 loops requiring multiplexing to be installed within 24 hours.[10] Although GTE strives to fill its customer orders as quickly as possible, GTE does not typically fill orders for telephone service for its own customers within 24 hours, even if no physical installation is required. The LCUG standards also state that ILECs should resolve 99 percent of service outages not requiring dispatch in 4 hours and 95 percent of service outages requiring dispatch in 24 hours.[11] These standards are absurd. They ignore not only the fact that each ILEC has different facilities and response times, but also the fact that service outages often result from storms or other natural causes over which ILECs have no control. When a storm causes large numbers of customers to be deprived of service, ILEC resources are often spread too thin to resolve all trouble in 24 hours. Here and elsewhere, the LCUG proposals are rife with such unrealistic standards that take absolutely no account of real-world conditions.

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[9] *See* Petition, Appendix A and B; AT&T Comments at iv, 11-22; Sprint Comments at 7-12.

[10] Petition, Appendix B at 6.

[11] *Id.* at 9.

B. ILECs are already complying with the Act's requirements by providing nondiscriminatory access to existing systems.

As the Eighth Circuit has made clear, the Act does not require ILECs to provide CLECs with better service than ILECs provide to themselves and their customers. In vacating the Commission's requirements that ILECs provide CLECs with superior quality services, the Court stated that "[p]lainly, the Act does not require incumbent LECs to provide its competitors with superior quality interconnection .... [and] does not mandate that requesting carriers receive superior quality access to network elements upon demand."[12] Moreover, the Court confirmed that:

> The fact that interconnection and unbundled access must be provided on rates, terms, and conditions that are nondiscriminatory merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier.[13]

Thus, the Court has validated what GTE and several other ILECs stated in their comments: CLECs are entitled to nondiscriminatory access at the same quality as ILECs provide to themselves. The fact that CLECs complain that it is expensive for them to learn to work with multiple ILECs' legacy systems is not a basis upon which the Commission can set national standards. For example, Sprint states that "for CLECs seeking to enter the local exchange market, the difficulty and costliness is increased eight-fold (seven RBOC systems and GTE's system) if there are no industry

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[12] Slip op. at 139.

[13] Slip op. at 140.

standards."[14] However, as the Court properly determined, Congress defined the standard of service which ILECs must provide in Section 251, so the question of whether CLECs must incur costs from interacting with different legacy systems has already been answered by Congress in the affirmative.

Congress required that CLECs have nondiscriminatory access to ILEC OSS systems so that CLECs would not immediately have to build new networks in order to compete in the local exchange market. Congress did not require such access so that ILECs could redesign their networks to make market entry as convenient as possible for CLECs regardless of the impact on ILEC customers. Requiring CLECs to interface with ILEC legacy systems is still significantly less expensive than building a new network[15]; there are no grounds for going still further by compelling ILECs to upgrade their systems to the CLECs' individual and diverse specifications.

ILEC networks have been engineered over time to provide the best possible service to customers at the most reasonable price possible. As noted by numerous commenters, ILECs have put significant effort and resources into making their systems

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[14] Sprint Comments at 4. Sprint only notes that CLECs will incur costs as a result of interacting with different ILEC systems. It fails to note that ILECs would incur tremendous costs if they were forced to change all of their legacy systems. Thus, it is not a question of avoiding costs being incurred, but who Congress intended to bear those costs.

[15] US ONE's suggestion that ILECs should be required to use CLEC interfaces for ILEC customers has no basis in the statute and turns the nondiscriminatory requirement on its head. *See* US ONE Communications Corporation Comments In Support of the Petition for Expedited Rulemaking By LCI International Telecom Corp. and Competitive Telecommunications Association, CC Docket No. 96-98, RM-9101 at 9-10 (filed July 10, 1997) ("US ONE Comments").

accessible and complying with the nondiscrimination requirement.[16] GTE itself has developed several methods, including manual and electronic processes, by which CLECs of different levels of technical sophistication can have nondiscriminatory access to GTE OSS systems.[17] As is clear from both the Petition and the LCUG proposals, what Petitioners are seeking is not nondiscriminatory treatment but superior treatment.

C. CLECs want to require ILECs to meet higher standards and revamp ILEC systems, but refuse to acknowledge their responsibility to pay for the necessary changes.

Petitioners and other CLECs are proposing to rewrite the Act so that ILECs are required to accommodate CLECs and to pay the costs of meeting CLEC OSS needs. For example, US ONE states that "[i]f the ILECs simply made the capital investment

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[16] GTE also notes that the level of OSS interoperability demanded by the CLEC community is significantly higher than the processes currently used for ILEC-to-ILEC jointly provisioned services. Jointly provisioned service orders are usually transmitted electronically and are then entered manually into the connecting ILEC's ordering and provisioning systems. Pre-ordering representatives still call to confirm service addresses in the event of uncertainty. In addition, connecting ILECs continue to issue their own service orders and coordinate work activity via telephone. Trouble reports are also reported via telephone. Tape and file transfer are used to exchange usage records. No ILEC has instantaneous access to another ILEC's systems. Thus, the OSS access currently provided by GTE to CLECs is significantly more sophisticated and mechanized than that used by GTE in its dealings with other ILECs.

[17] AT&T claims that CLECs are not being given sufficient time for notice of and comment on changes to ILEC OSS systems. AT&T Comments at 22. Although GTE agrees that CLECs are entitled to sufficient notice to adjust to ILEC OSS changes (and the Commission adopted rules in its Second Report and Order in the Interconnection Proceeding implementing notice requirements), CLECs are not entitled to comment on the proposed changes or have any input into ILEC internal decision-making. CLECs will have the opportunity to influence ILEC OSS interfaces through industry standards-setting bodies. Allowing CLECs to have veto rights over ILEC network configuration issues would be a complete abrogation the nondiscrimination standard.

necessary to automate the cutover of local loops, the cutover of a loop to a CLEC (or from a CLEC back to the ILEC) would take no longer than it does for the ILEC to install service for its own local customers."[18] As GTE explained in its Opposition, both the Act and the Commission's rules and precedents require that these costs be paid by the cost-causer, in this case the CLECs.[19] In addition to determining that ILECs are not required to provide superior services under the Act, the Court of Appeals affirmed that CLECs must pay the costs ILECs incur meeting their obligations, stating that "[u]nder the Act, an incumbent LEC will recoup the costs involved in providing interconnection and unbundled access from the competing carriers making these requests."[20] Thus, CLECs must pay the costs ILECs incur in providing CLECs with nondiscriminatory access to OSS and may only obtain superior interconnection and access through voluntary agreements with ILECs.

II. THE RELIEF PETITIONERS SEEK IS UNNECESSARY, WASTEFUL, AND LEGALLY SUSPECT.

A. Additional Commission OSS requirements are unwarranted and unnecessary.

The Act, the Commission's Interconnection orders, and the Court of Appeals' decision have provided states with the general guidance needed to implement the

[18] US ONE Comments at 8.

[19] GTE Opposition at 23-28.

[20] Slip op. at 134.

nondiscrimination standard.[21] Petitioners themselves have amply cited to the Commission's descriptions of the standard defined in Section 251.[22] The Commission has made clear that CLECs are entitled to nondiscriminatory access to systems for: pre-ordering, ordering, provisioning, maintenance and repair, and billing.[23] In addition, the Commission has explained that this standard requires ILECs to provide the access and quality of service at least as good as the ILEC provides to itself.[24] The Court of Appeals did not have any difficulty interpreting either the Act or the Commission's standards[25] and neither have the majority of state commissions.[26] Consequently, additional guidance from the Commission is simply unnecessary.

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[21] Although some state commissions have suggested that nonbinding guidelines without detailed requirements may be helpful, the Commission's orders and the Court of Appeals' decisions have fully outlined the standards states need to apply in arbitration proceedings and approving agreements. *See* Comments of the Public Service Commission of Wisconsin, CC Docket No. 96-98, RM-9101 (filed July 10, 1997); Comments of the People of the State of California and the Public Utilities Commission of the State of California on Petition for Expedited Operations Support Systems Rulemaking, CC Docket No. 96-98, RM-9101 (filed July 10, 1997). Even if they want to, states cannot abdicate their responsibilities to decide interconnection matters through arbitrations and negotiations to Commission rulemakings. The Commission only has authority under the Act to rule on these matters on a case-by-case basis if states ignore their Section 252 responsibilities, and GTE is not aware of any state in which this has occurred. Thus, the states should continue to resolve these issues through the detailed proceedings that are already underway, and in many cases completed.

[22] Petition at 3-6.

[23] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15767 (1996).

[24] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 19738, 19742 (1997).

[25] *See* Slip op. at 140.

Moreover, notwithstanding the statements of various CLECs,[27] ILECs are not hiding historical data on ILEC internal performance standards, so no additional rules in this area are necessary. As explained in GTE's Opposition, some performance measures on which CLECs are seeking historical data have not been examined in the past because they were not necessary prior to competition.[28] Although GTE cannot speak for other ILECs, GTE's internal measures are based upon state requirements to meet certain service standards. For example, GTE has measured completion of service by the due date and time for restoring service after outages. It has not measured OSS system performance at a screen, field, and inquiry transaction level because such measurements do not indicate quality of service to the end user. GTE compiles information based on the categories each state requires it to meet and files it with the appropriate state commission on a regular basis. Thus, historical data on GTE benchmarks are in fact available.

In addition, GTE has numerous interconnection agreements which require it to meet new standards related to local competition. These extensive standards require GTE to meet both equality and absolute benchmarks and to supply this information to the relevant CLEC. Although GTE believes that all of its agreements include sufficient

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(...Continued)
[26] GTE Opposition at 12-14

[27] *See e.g.*, MCI Comments at 6; Comments of GST Telecom, Inc. in Support of Petition for Expedited Rulemaking, CC Docket No. 96-98, RM-9101 at 9-10 (filed July 10, 1997) ("GST Comments").

[28] GTE Opposition at 12-14.

information regarding the level of service received by CLECs, any CLEC that is dissatisfied with state-approved agreements can seek redress in federal district court, as required in Section 252.[29] Alternatively, CLECs that are concerned that ILECs are not meeting their contractual obligations can ask the relevant state commission to investigate.[30] Commission action would be at best superfluous and at worst harmful and unauthorized, as discussed below.

B. Additional federal OSS standards will be disruptive to industry standards-setting efforts and implementation of state-approved agreements.

Most commenters have acknowledged that industry standards-setting bodies such as the Ordering and Billing Forum ("OBF") are making substantial progress in resolving issues.[31] Indeed, there has been no substantiated complaint that OBF is not working in an efficient manner. Rather, all parties acknowledge that the task of developing national standards is complex.

Against this background, setting an arbitrary deadline will not diminish the difficulty of the task or make it easier to resolve technical issues. Such regulatory intervention could, however, cause these bodies to rush to adopt incomplete or

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[29] See 47 U.S.C. § 252(e)(6).

[30] As the Court of Appeals noted, the Commission does not have authority to consider state commission determinations under the Act and cannot enforce the provisions of state approved agreements. Slip op. at 123.

[31] *See, e.g.*, GST Comments at 12; Comments of Telco Communications Group, Inc. in Support of Petition for Expedited Rulemaking, CC Docket No. 96-98, RM-9101 at 11-12 (filed July 10, 1997) ("Telco Comments"); MCI Comments at 14-15; Opposition of U S WEST, Inc., CC Docket No. 96-98, RM-9101 at 17 n.32 (filed July 10, 1997).

untenable standards and force ILECs and CLECs alike to waste their resources. Moreover, because these bodies are fully representative of the industry, they are already essentially producing a negotiated solution. Therefore, instituting a negotiated rulemaking would duplicate efforts already being undertaken.

Finally, contrary to MCI's statements,[32] states are not reluctant to impose standards and have in fact proposed detailed requirements for ILECs and noncompliance penalties relating to OSS access. As GTE explained in its Opposition, twelve states have imposed detailed requirements which include both parity and absolute standards with severe penalties as part of interconnection agreements.[33] GTE believes that most CLEC complaints arise because state commissions are sometimes refusing to adopt CLEC-proposed superior treatment standards. For example, Ameritech notes that the LCUG proposals were based on an AT&T proposal to the Illinois Hearing Examiner, which was rejected.[34] Since the states will in most cases not adopt these measures, Petitioners have brought them to the Commission.

If the Commission were to adopt new OSS standards, it would create massive confusion in existing interconnection arrangements. As the Court of Appeals noted:

> Even when the FCC issues rules pursuant to its valid rulemaking authority under section 251, subsection 251(d)(3) prevents the FCC from *preempting* a state commission order that establishes access and

[32] MCI Comments at ii.

[33] GTE Opposition at 12-14.

[34] Ameritech Initial Comments in Opposition to Petition, CC Docket No. 96-98, RM-9101 at 11-12 (filed July 10, 1997).

> interconnection obligations so long as the state commission order (i) is consistent with the requirements of section 251 and (ii) does not substantially prevent the implementation of the requirements of the section 251 and purposes of Part II.[35]

Most state commissions have already established standards for OSS implementation which comply with the Act as part of numerous arbitrated and approved agreements. Thus, further federal standards will only cause uncertainty regarding the terms of approved and implemented agreements rather than resolving open issues.

C. The Commission lacks the authority to adopt additional OSS requirements.

Even if the Commission believed further action on its part were justified, which it is not, the agency lacks authority to issue anything more than precatory guidelines. As the Eighth Circuit resoundingly confirmed, the Commission has only limited authority to regulate intrastate matters under Sections 251 and 252 of the Act. Although the Court affirmed the Commission's finding that operations support systems are an unbundled element,[36] it determined that "the fact that the local competition provisions of the Act may have a tangential impact on interstate services is not sufficient to overcome the operation of section 2(b) and does not alter the fundamentally intrastate nature of the Act's local competition provisions."[37] Moreover, the Commission has no authority under other sections of the Communications Act to regulate "the obligations imposed by

[35] Slip op. at 127 (emphasis in original).

[36] Slip op. at 129-135.

[37] Slip op. at 113.

sections 251 and 252 [which] fundamentally involve local intrastate telecommunications matters."[38] Thus, although the Commission may designate unbundled elements, Congress has left it to the states to determine the conditions under which those elements will be provided through arbitration and approval of interconnection agreements.

Those commenters who state that the Commission has authority to regulate OSSs under Section 271,[39] Title II,[40] Section 154(i),[41] and Section 312[42] of the Communications Act are misguided. First, Section 271 is expressly limited to "Bell Operating Company entry into InterLata Services"[43] and Section 601 eliminates the *GTE Consent Decree* without imposing any such conditions. Second, under Section 152(b), the Commission does not have jurisdiction over intrastate communications, such as OSSs – a legal reality unaffected by agency powers under Title II and Section 154(i). Finally, Section 312 provisions governing radio licenses and permits used in the provision of common carrier services have no relevance to the agency's general authority over intrastate Title II common carrier services themselves.

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[38] Slip op. at 123. *See also* Slip op. at 103, 112, 119-120, 125, 127.

[39] Telco Comments at 4-5.

[40] Telco Comments at 5-6.

[41] Comments of Kansas City Fibernet, Inc. and Focal Communications Corporation in Support of Petition for Expedited Rulemaking on Operations Support Systems, CC Docket No. 96-98, RM-9101 at 4-5 (filed July 10, 1997).

[42] AT&T Comments at 32.

[43] 47 U.S.C. § 271.

III. LONG DISTANCE CARRIERS ARE SEEKING TO REWRITE THE ACT TO PREVENT COMPETITION IN THE LONG DISTANCE MARKET.

Despite the clear language of Section 271, several commenters have requested that the Commission punish ILECs that do not comply with the Petition's proposed OSS standards by applying the provisions of Section 271 to independent ILECs and preventing them from soliciting new customers for long distance service.[44] Congress, however, excluded independent LECs in general, and GTE in particular, from the provisions of Section 271. Accordingly, the Commission cannot ignore Congress's explicit direction and thereby prevent additional competition in the long distance market.

A. Congress made a clear distinction between Bell Operating Companies and independent LECs.

The language and legislative history of the Telecommunications Act of 1996 make clear that by lifting the *GTE Consent Decree* restrictions, Congress intended to allow GTE to operate more efficiently in the provision of interexchange services. Congress did not, contrary to the demands of incumbent IXCs, place additional restrictions on the interexchange services GTE was already authorized to provide.

In Section 601 of the Telecommunications Act of 1996, Congress specifically superseded both the *GTE Consent Decree* and the *AT&T Consent Decree*.[45] The *GTE Consent Decree* had prohibited the GTE operating companies from providing

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[44] *See, e.g.*, MCI Comments at 10-11; Comments of WorldCom, Inc. on Petition for Expedited Rulemaking, CC Docket No. 96-98, RM-9101 at 13 (filed July 10, 1997); Comments of the Competitive Telecommunications Association (CompTel), CC Docket No. 96-98, RM-9101 at 6-7 (filed July 10, 1997).

interexchange telecommunication services directly, but allowed GTE or an affiliate of GTE not having an ownership interest in a GTE operating company to provide such services. As Senator Pressler noted in the Senate debate, "GTE is the only non-Bell telephone company with such cumbersome proceedings. These procedures resulted in higher costs and hamper GTE's ability to compete."[46] Since Congress determined the existing constraints on GTE were no longer necessary, the Commission cannot second guess this decision by applying even stricter restrictions on GTE's provision of interexchange service than those Congress eliminated.

While Section 271 requires that Bell Operating Companies seeking to provide interexchange service fulfill certain conditions, Section 271 applies only to "Bell Operating Companies,"[47] a term which Congress defined specifically in the Act and

(...Continued)
[45] 47 U.S.C. § 601(a)(1) - (2).

[46] 141 Cong. Rec. S8069, S8076 (daily ed. June 9, 1995) (Sen. Pressler).

[47] Section 3(a)(2) of the Act defines a Bell Operating Company:

"Bell operating company. – The term 'Bell operating company' –

(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(Continued...)

which does not include any GTE-related companies. The deliberate omission of GTE and other independent ILECs from the language of Section 271 establishes that Congress has conclusively determined that GTE and independent ILECs should not be subject to these restrictions. This omission cannot be viewed as accidental. When Congress intended that sections of the Act apply to GTE and other local exchange carriers, it stated so clearly and unambiguously, such as in Section 251.[48]

As if further support were needed, the legislative history also demonstrates that Congress did not intend GTE to be subject to Section 271 requirements. Twice in the Conference Report, the Committee indicated that GTE should not be bound by the interexchange restrictions. The most pertinent discussion occurs in the Conference Committee's discussion of Section 601:

> By eliminating the prospective effect of the GTE Consent Decree, this language removes entirely the GTE Consent Decree's prohibition on GTE's and the GTE Operating Companies' entry into the interexchange market. No provision in the Communications Act should be construed as creating or continuing in any way the GTE Consent Decree's prohibition on GTE or its operating companies' entry into the interexchange market.[49]

(...Continued)

(B) includes any successor or assign of any such company that provides wireline telephone exchange service; but

(C) does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B)."

[48] *See, e.g.,* 47 U.S.C. § 251(b).

[49] H.R. Conf. Rep. No. 104-458, at 199 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 213. Similarly, in its discussion of Section 251, the Report states that:

(Continued...)

Because Congress specifically excluded GTE and other independent LECs from the conditions of Sections 271 and because the Commission itself has found that independent LEC long distance services should be treated as nondominant,[50] the Commission must decline the invitation to ignore the clear language of the Act and subject independent ILECs to additional long distance restrictions.

B. Interexchange carriers ("IXCs") are seeking to drive independent ILECs from the long distance market to protect themselves from competition.

GTE, SNET, and other independent ILECs are already providing in-region long distance services and are successfully competing with AT&T, MCI, Sprint, and other carriers. Obviously, their success has not been well-received by the incumbent IXCs, who are embracing any means of restoring their stranglehold on the long distance market and maintaining their substantial price/cost margins.[51] According to the *New*

(...Continued)
"The use of the provisions of the respective consent decrees to provide, on an interim basis, the substance of the new statutory duty in no way revives the consent decrees. In particular, the use of the provisions of the GTE consent decree relating to equal access and nondiscrimination on this interim basis should not be construed in any way as recreating or continuing the GTE Consent Decree's prohibition on GTE's or the GTE Operating Companies' entry into the interexchange market." H.R. Conf. Rep. No. 104-458, at 123 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 134.

[50] In considering what restrictions to apply to independent LECs provision of in-region, intraLATA services, the Commission itself concluded that such carriers should be subject to fewer, not increased, restrictions and determined that provision of such services should be treated as nondominant. Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, CC Docket No. 96-149, CC Docket No. 96-61 (rel. Apr. 18, 1997).

[51] *See* P.W. MacAvoy, THE FAILURE OF ANTITRUST AND REGULATION TO ESTABLISH COMPETITION IN LONG DISTANCE TELEPHONE SERVICES, (MIT
(Continued...)

York Times, AT&T has filed four price increases, totaling 21.7 percent, since January 1994, each of which has been matched by MCI and Sprint.[52] Notably, these price increases have occurred against a backdrop of rapidly declining marginal costs.

As Congress intended, ILECs entering the long distance market have disrupted the AT&T-led detente. GTE recently announced that it had signed up one million long distance customers after only one year of providing such services. Similarly, in Connecticut, SNET has been providing long distance services and has lowered interstate and intrastate long distance rates for residential customers by approximately 22 percent.[53] AT&T responded by asking the Commission to permit it to offer uniquely lower rates in Connecticut, essentially conceding that competition in that state is far more effective than competition elsewhere in the nation.[54]

The IXCs are seeking to enlist the Commission's aid in countering losses that are due to the introduction of competitive discipline on a market that has been largely bereft of true competition. Put another way, the IXCs/CLECs are only pro-competition

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(...Continued)
Press/AEI Press 1996), at Chapter 5.

[52] "Rates Increased 5.9% by AT&T, Its Biggest Rise in Nearly 3 Years," *New York Times* at D1 (Nov. 28, 1996). AT&T filed a modest rate decrease in response to the substantial access charge reductions mandated by the Commission in the Access Reform and Price Cap orders.

[53] *See* Statement of Dr. Jerry Hausman at 9, attached to Comments of the United States Telephone Association, CC Docket No. 96-149 (filed Aug. 15, 1996).

[54] *See* AT&T Corp.'s Petition for Reconsideration, CC Docket No. 96-61 (filed Sept. 16, 1996).

when the competition is not in their market. The Commission has rejected such entreaties in the past, and it must do so again here.

IV. CONCLUSION

The Court of Appeals has made clear that CLECs are entitled only to nondiscriminatory access to ILEC OSSs and that ILECs are not required to provide CLECs superior quality access or interconnection. In addition, CLECs must pay the costs ILECs incur in providing nondiscriminatory access to CLECs. Despite their claims to understand the nondiscrimination standard, Petitioners have nonetheless proposed that the Commission require ILECs to meet standards which would ensure that CLECs receive service superior to that which ILECs provide their own customers. These requests, like their suggestion that the Commission use Section 271 to discipline allegedly recalcitrant independent ILECs, are undeniably contrary to the Act and must be rejected.

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July 30,1997

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